

SHB 2126 - H AMD

By Representative Lantz

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that it is
4 important that dependent persons who are witnesses and victims of
5 crime cooperate with law enforcement and prosecutorial agencies and
6 that their assistance contributes to state and local enforcement
7 efforts and the general effectiveness of the criminal justice
8 system. The legislature finds that the state has an interest in
9 making it possible for courts to adequately and fairly conduct
10 cases involving dependent persons who are victims of crimes.
11 Therefore, it is the intent of the legislature, by means of this
12 chapter, to insure that all dependent persons who are victims and
13 witnesses of crime are treated with sensitivity, courtesy, and
14 special care and that their rights be protected by law enforcement
15 agencies, prosecutors, and judges in a manner no less vigorous than
16 the protection afforded to other victims, witnesses, and criminal
17 defendants.

18 NEW SECTION. **Sec. 2.** Unless the context clearly requires
19 otherwise, the definitions in this section apply throughout this
20 chapter.

21 (1) "Crime" means an act punishable as a felony, gross
22 misdemeanor, or misdemeanor under the laws of this state or
23 equivalent federal or local law.

24 (2) "Dependent person" has the same meaning as that term is
25 defined in RCW 9A.42.010.

26 (3) "Victim" means a living person against whom a crime has
27 been committed.

28 (4) "Witness" means a person who has been or is expected to be
29 summoned to testify for the prosecution or defense in a criminal

1 action, or who by reason of having relevant information is subject
2 to call or likely to be called as a witness, whether or not an
3 action or proceeding has been commenced.

4 (5) "Family member" means a person who is not accused of a
5 crime and who is an adult child, adult sibling, spouse, parent, or
6 legal guardian of the dependent person.

7 (6) "Advocate" means any person not accused of a crime,
8 including a family member, approved by the witness or victim, in
9 consultation with his or her guardian if applicable, who provides
10 support to a dependent person during any legal proceeding.

11 (7) "Court proceedings" means any court proceeding conducted
12 during the course of the prosecution of a crime committed against
13 a dependent person, including pretrial hearings, trial, sentencing,
14 or appellate proceedings.

15 (8) "Identifying information" means the dependent person's
16 name, address, location, and photograph, and in cases in which the
17 dependent person is a relative of the alleged perpetrator,
18 identification of the relationship between the dependent person and
19 the alleged perpetrator.

20 (9) "Crime victim/witness program" means any crime victim and
21 witness program of a county or local law enforcement agency or
22 prosecutor's office, any rape crisis center's sexual assault victim
23 advocacy program as provided in chapter 70.125 RCW, any domestic
24 violence program's legal and community advocate program for
25 domestic violence victims as provided in chapter 70.123 RCW, or any
26 other crime victim advocacy program which provides trained
27 advocates to assist crime victims during the investigation and
28 prosecution of the crime.

29 NEW SECTION. **Sec. 3.** (1) In addition to the rights of victims
30 and witnesses provided for in RCW 7.69.030, there shall be every
31 reasonable effort made by law enforcement agencies, prosecutors,
32 and judges to assure that dependent persons who are victims or
33 witnesses are afforded the rights enumerated in this section. The
34 enumeration of rights under this chapter shall not be construed to
35 create substantive rights and duties, and the application of an
36 enumerated right in an individual case is subject to the discretion
37 of the law enforcement agency, prosecutor, or judge. Dependent
38 persons who are victims or witnesses in the criminal justice system

1 have the following rights, which apply to any criminal court or
2 juvenile court proceeding:

3 (a) To have explained in language easily understood by the
4 dependent person, all legal proceedings and police investigations
5 in which the dependent person may be involved.

6 (b) With respect to a dependent person who is a victim of a sex
7 or violent crime, to have a crime victim advocate from a crime
8 victim/witness program, or any other advocate of the victim's
9 choosing, present at any prosecutorial or defense interviews with
10 the dependent person. This subsection applies unless it creates
11 undue hardship and if the presence of the crime victim advocate or
12 other advocate does not cause any unnecessary delay in the
13 investigation or prosecution of the case. The role of the crime
14 victim advocate or other advocate is to provide emotional support
15 to the dependent person and to promote the dependent person's
16 feelings of security and safety.

17 (c) To be provided, whenever possible, a secure waiting area
18 during court proceedings and to have an advocate or support person
19 remain with the dependent person prior to and during any court
20 proceedings.

21 (d) To allow an advocate to make recommendations to the
22 prosecuting attorney about the ability of the dependent person to
23 cooperate with prosecution and the potential effect of the
24 proceedings on the dependent person.

25 (e) To allow an advocate to provide information to the court
26 concerning the dependent person's ability to understand the nature
27 of the proceedings.

28 (f) To be provided information or appropriate referrals to
29 social service agencies to assist the dependent person with the
30 emotional impact of the crime, the subsequent investigation, and
31 judicial proceedings in which the dependent person is involved.

32 (g) To allow an advocate to be present in court while the
33 dependent person testifies in order to provide emotional support to
34 the dependent person.

35 (h) To provide information to the court as to the need for the
36 presence of other supportive persons at the court proceedings while
37 the dependent person testifies in order to promote the dependent
38 person's feelings of security and safety.

1 (i) To allow law enforcement agencies the opportunity to enlist
2 the assistance of other professional personnel such as victim
3 advocates or prosecutorial staff trained in the interviewing of the
4 dependent person.

5 (j) With respect to a dependent person who is a victim of a
6 violent or sex crime, to receive either directly or through the
7 dependent person's legal guardian, if applicable, at the time of
8 reporting the crime to law enforcement officials, a written
9 statement of the rights of dependent persons as provided in this
10 chapter. The statement may be paraphrased to make it more easily
11 understood. The written statement shall include the name, address,
12 and telephone number of a county or local crime victim/witness
13 program, if such a crime victim/witness program exists in the
14 county.

15 (2) Any party may request a preliminary hearing for the purpose
16 of establishing accommodations for the dependent person consistent
17 with, but not limited to, the rights enumerated in this section.

18 NEW SECTION. **Sec. 4.** (1) The prosecutor or defense may file
19 a motion with the court at any time prior to commencement of the
20 trial for an order authorizing the taking of a video tape
21 deposition for the purpose of preserving the direct testimony of
22 the moving party's witness if that witness is a dependent person.

23 (2) The court may grant the motion if the moving party shows
24 that it is likely that the dependent person will be unavailable to
25 testify at a subsequent trial. The court's finding shall be based
26 upon, at a minimum, recommendations from the dependent person's
27 physician or any other person having direct contact with the
28 dependent person and whose recommendations are based on specific
29 behavioral indicators exhibited by the dependent person.

30 (3) The moving party shall provide reasonable written notice to
31 the other party of the motion and order, if granted, pursuant to
32 superior court criminal rules for depositions.

33 (4) Both parties shall have an opportunity to be present at the
34 deposition and the nonmoving party shall have the opportunity to
35 cross-examine the dependent person.

36 (5) Under circumstances permitted by the rules of evidence, the
37 deposition may be introduced as evidence in a subsequent proceeding
38 if the dependent person is unavailable at trial and both the

1 prosecutor and the defendant had notice of and an opportunity to
2 participate in the taking of the deposition.

3 NEW SECTION. **Sec. 5.** (1) On motion of the prosecuting
4 attorney in a criminal proceeding, the court may order that a
5 dependent person may testify in a room outside the presence of the
6 defendant or the jury, or both, while one-way closed circuit
7 television equipment simultaneously projects the dependent person's
8 testimony into another room so the defendant or the jury, or both,
9 can watch and hear the dependent person testify if:

10 (a) The testimony is taken during the court proceeding;

11 (b) The court finds by substantial evidence, in a hearing
12 conducted outside the presence of the jury, that requiring the
13 dependent person to testify in the presence of the defendant or the
14 jury, or both, will cause the dependent person to suffer serious
15 emotional or mental distress that will prevent the dependent person
16 from reasonably communicating at the trial or that the dependent
17 person will suffer emotional or mental distress from testifying in
18 the presence of the defendant or the jury, or both. If the
19 defendant is excluded from the presence of the dependent person,
20 the jury must also be excluded. If the dependent person is able to
21 testify in the presence of the defendant but not the jury, the jury
22 shall be excluded from the room and the defendant shall remain in
23 the room with the dependent person;

24 (c) The court finds that the prosecutor has made all reasonable
25 efforts to prepare the dependent person for testifying, including
26 informing the dependent person about community counseling services,
27 giving court tours, and explaining the trial process. If the
28 prosecutor fails to demonstrate that preparations were implemented
29 or the prosecutor in good faith attempted to implement them, the
30 court shall deny the motion;

31 (d) The court balances the strength of the state's case without
32 the testimony of the dependent person against the defendant's
33 constitutional rights and the degree of infringement of the closed-
34 circuit television procedure on those rights;

35 (e) The court finds that no less restrictive method of
36 obtaining the testimony exists that can adequately protect the
37 dependent person from the serious emotional or mental distress;

1 (f) When the court allows the dependent person to testify
2 outside the presence of the defendant, the defendant can
3 communicate constantly with the defense attorney by electronic
4 transmission and be granted reasonable court recesses during the
5 dependent person's testimony for person-to-person consultation with
6 the defense attorney;

7 (g) The court can communicate with the attorneys by an audio
8 system so that the court can rule on objections and otherwise
9 control the proceedings;

10 (h) All parties in the room with the dependent person are on
11 camera and can be viewed by all other parties. If viewing all
12 participants is not possible, the court shall describe for the
13 viewers the location of the prosecutor, defense attorney, and other
14 participants in relation to the dependent person;

15 (i) The court finds that the television equipment is capable of
16 making an accurate reproduction and the operator of the equipment
17 is competent to operate the equipment; and

18 (j) The court imposes reasonable guidelines upon the parties
19 for conducting the filming to avoid trauma to the dependent person
20 or abuse of the procedure for tactical advantage.

21 (2) The prosecutor, defense attorney, and a neutral and trained
22 victim's advocate, if any, shall always be in the room where the
23 dependent person is testifying.

24 (3) During the hearing conducted under subsection (1) of this
25 section to determine whether the dependent person may testify
26 outside the presence of the defendant or the jury, or both, the
27 court may conduct the observation and examination of the dependent
28 person outside the presence of the defendant if:

29 (a) The prosecutor alleges and the court concurs that the
30 dependent person will be unable to testify in front of the
31 defendant or will suffer severe emotional or mental distress if
32 forced to testify in front of the defendant;

33 (b) The defendant can observe and hear the dependent person by
34 closed-circuit television;

35 (c) The defendant can communicate constantly with the defense
36 attorney during the examination of the dependent person by
37 electronic transmission and be granted reasonable court recesses
38 during the dependent person's examination for person-to-person
39 consultation with the defense attorney; and

1 (d) The court finds the closed-circuit television is capable of
2 making an accurate reproduction and the operator of the equipment
3 is competent to operate the equipment. Whenever possible, all the
4 parties in the room with the dependent person shall be on camera so
5 that the viewers can see all the parties. If viewing all
6 participants is not possible, then the court shall describe for the
7 viewers the location of the prosecutor, defense attorney, and other
8 participants in relation to the dependent person.

9 (4) The court shall make particularized findings on the record
10 articulating the factors upon which the court based its decision to
11 allow the dependent person to testify via closed-circuit television
12 pursuant to this section. The factors the court may consider
13 include, but are not limited to, a consideration of the dependent
14 person's age, physical health, emotional stability, expressions of
15 fear made by the dependent person regarding testifying in open
16 court or in front of the defendant, the relationship of the
17 defendant to the dependent person, and the court's observations of
18 the dependent person's inability to reasonably communicate in front
19 of the defendant or in open court. The court's findings shall
20 identify the impact the factors have upon the dependent person's
21 ability to testify in front of the jury or the defendant, or both,
22 and the specific nature of the emotional or mental trauma the
23 dependent person would suffer. The court shall determine whether
24 the source of the trauma is the presence of the defendant, the
25 jury, or both, and shall limit the use of the closed-circuit
26 television accordingly.

27 (5) This section does not apply if the defendant is an attorney
28 pro se unless the defendant has a court-appointed attorney
29 assisting the defendant in the defense.

30 (6) This section may not preclude the presence of both the
31 victim and the defendant in the courtroom together for purposes of
32 establishing or challenging the identification of the defendant
33 when identification is a legitimate issue in the proceeding.

34 (7) All recorded tapes of testimony produced by closed-circuit
35 television equipment shall be subject to any protective order of
36 the court for the purpose of protecting the privacy of the
37 dependent person.

1 (8) Nothing in this section creates a right of the dependent
2 person to a closed-circuit television procedure in lieu of
3 testifying in open court.

4 (9) The state shall bear the costs of the closed-circuit
5 television procedure.

6 NEW SECTION. **Sec. 6.** (1) The failure to provide notice to a
7 dependent person of the rights enumerated in this chapter or the
8 failure to provide the rights enumerated shall not result in civil
9 liability so long as the failure was in good faith.

10 (2) Nothing in this chapter shall be construed to limit a
11 party's ability to bring an action, including an action for
12 damages, based on rights conferred by other state or federal law.

13 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act
14 constitute a new chapter in Title 7 RCW.

15 NEW SECTION. **Sec. 8.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

EFFECT: Removes the provision that prohibits the disclosure of a dependent person's identifying information when disclosure would harm the person's reputation; Allows the prosecution or defense to request a preliminary hearing to establish accommodations for a dependent person victim or witness; Amends the definition of "witness" to include a person expected to testify for the defense (not just the prosecution) and allows the defense to seek a video tape deposition to preserve direct testimony; Clarifies that an advocate is a person approved by the victim or witness in consultation with the victim or witness's guardian, if applicable.